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# Supreme Court of the United States

OCTOBER TERM, 1966

No. 498

SAMUEL MOSLEY,
Respondent,

*against*

CIA. MAR. ADRA S.A.,
Respondent,

*against*

LIPSETT STEEL PRODUCTS, INC.,
Petitioner.

## PETITIONER'S REPLY TO BRIEF OF RESPONDENT MOSLEY

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VINCENT A. CATOGGIO,
On Petition.

## Cases Cited


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### Reply to Respondent Mosley

Respondent Mosley, cites *Mahnich* v. *Southern S.S. Co.*, 321 U. S. 96, in support of the proposition that this court has equated a duty to provide a safe place to work with the obligation of seaworthiness. A study of the opinion in that case, as well as other decisions of this court in cases involving the question of what constitutes unseaworthiness reveals that a defect in an appliance or appurtenance to the ship is a prerequisite to unseaworthiness. That holding repeatedly and consistently has been made by this court with apparent meticulous and studied care.

Typical is the language used in *Mahnich* v. *Southern S.S. Co.*, 321 U. S. 96 at page 103:

> "The staging from which petitioner fell was an appliance appurtenant to the ship. It was unseaworthy in the sense that it was inadequate for the purpose for which it was ordinarily used, because of the defective rope with which it was rigged. Its inadequacy rendered it unseaworthy, whether the mate's failure to observe the defect was negligent or unavoidable."

In *Gutierrez* v. *Waterman S.S. Corp.*, 373 U. S. 206, this court said at page 213:

> "These cases all reveal a proper application of the seaworthiness doctrine, which is in essence that things about a ship, whether the hull, the decks, the machinery, the tools furnished, the stowage, or the cargo containers, must be reasonably fit for the purpose for which they are to be used. See Mitchell v. Trawler Racer, Inc., 362 U. S. 539, 550, 4 L ed 2d 941, 948, 80 S Ct 926; Morales v. Galveston, 370 U. S. 165, 169, 172, 8 L ed 2d 412, 415, 417, 82 S Ct 1226 (dissenting opinion)."

In *Mitchell* v. *Trawler Racer*, 362 U. S. 539, it is indicated that unseaworthiness would have to rest on the condition of the ship's rail.

In *Morales* v. *City of Galveston*, 370 U. S. 165, longshoremen while trimming wheat loaded on a ship were overcome in the hold by fumes from a chemical insecticide which had been sprayed on the wheat. Clearly the place where these longshoremen were working, was an unsafe place. This court said at page 170:

> "* * * What caused injury in the present case, however, was not the ship, its appurtenances, or its crew, but the isolated and completely unforeseeable intro-

duction of a noxious agent from without. The trier of the facts ruled, under proper criteria, that the Grelmarion was not in any manner unfit for the service to which she was to be put and we cannot say that his determination was wrong."

The Justices who dissented did not suggest that the vessel was unseaworthy because the longshoremen had been provided an unsafe place to work, but they said instead at page 171:

> "The vessel's cargo spaces were not equipped with a forced ventilation system. Grain vessels, the district court found, rarely are so equipped; and it is concluded that forced ventilation 'is not necessary or customary.' If this were an isolated instance of fumigated grain releasing noxious gases, no claim of unseaworthiness could be maintained.
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> * * * * * *
>
> A vessel without a forced ventilation system would be seaworthy if this injury were an unexpected isolated occurrence. * * * Unseaworthiness by reason of the absence of a forced ventilation system is clearer here than it was in Mitchell v. Trawler Racer Inc., 362 U. S. 539. * * *"

The contents of respondent Mosley's brief only serves to focus attention on the rampant uncertainty and confusion which exists as to what constitutes unseaworthiness. It adds emphasis to the urgent need for clarification of the rule.

Dated: New York, N. Y., September 29, 1966.

Respectfully submitted,

EDMUND F. LAMB,
Attorney for Petitioner.

VINCENT A. CATOGGIO,
On petition.